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Attorneys for Plaintiffs,
VIRGIN RECORDS AMERICA, INC.;
UMG RECORDINGS, INC.; SONY BMG
MUSIC ENTERTAINMENT; CAPITOL
RECORDS, INC.; WARNER BROS.
RECORDS INC.; and ARISTA RECORDS
LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
DIVISION

VIRGIN RECORDS AMERICA, INC., a
California corporation; UMG RECORDINGS,
INC., a Delaware corporation; SONY BMG
MUSIC ENTERTAINMENT, a Delaware
general partnership; CAPITOL RECORDS,
INC., a Delaware corporation; WARNER
BROS. RECORDS INC., a Delaware
corporation; and ARISTA RECORDS LLC, a
Delaware limited liability company,

Plaintiffs,

v.

JOHN DOE,

Defendant.

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY

EX PARTE APPLICATION FOR LEAVE TO TAKE IMMEDIATE DISCOVERY

Case No. _____

#35652 v1

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
 2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
 3 of Law, hereby apply ex parte for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 1. Plaintiffs, record companies who own the copyrights in the most popular sound
 6 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a
 7 third party Internet Service Provider ("ISP") to determine the true identity of Defendant John Doe,
 8 who is being sued for direct copyright infringement.¹

9 2. As alleged in the complaint, Defendant John Doe, without authorization, used an
 10 online media distribution system to download Plaintiffs' copyrighted works and/or distribute
 11 copyrighted works to the public. Although Plaintiffs do not know the true name of Defendant John
 12 Doe, Plaintiffs have identified Defendant by a unique Internet Protocol ("IP") address assigned to
 13 Defendant on the date and time of Defendant's infringing activity.

14 3. Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that
 15 identify Defendant's true name, current (and permanent) address and telephone number, e-mail
 16 address, and Media Access Control ("MAC") address. Without this information, Plaintiffs cannot
 17 identify Defendant John Doe or pursue their lawsuit to protect their copyrighted works from repeated
 18 infringement.

19 4. Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a
 20 Rule 26(f) conference where there are no known defendants with whom to confer.

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 25 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to personally
 26 serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of Court
 27 pursuant to Fed. R. Civ. P. 5(b)(2)(C) ("If the person served has no known address, [service under
 28 Rule 5(a) is made by] leaving a copy with the clerk of the court.") and will serve Defendant's ISP
 with a copy of this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the ISP
 to notify the Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply ex parte for an Order permitting Plaintiffs to conduct the foregoing
2 requested discovery immediately.

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4 Dated: February 21, 2008

HOLME ROBERTS & OWEN LLP

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6 By: 

MATTHEW FRANKLIN JAKSA

7 Attorney for Plaintiffs

8 VIRGIN RECORDS AMERICA, INC.; UMG
9 RECORDINGS, INC.; SONY BMG MUSIC
10 ENTERTAINMENT; CAPITOL RECORDS,
11 INC.; WARNER BROS. RECORDS INC.; and
12 ARISTA RECORDS LLC
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